IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.728 OF 2007

M/s Bentley Hotel and Ors. .. Petitioners
Vs
Mrs Khursheed M narang and ors. .. Respondents.

Mr V.Dhond, i/b Mr N.V.Mhatre, for the petitioners.
Mr Raj Patel i/b Mr M.P.Patel, for respondent no.1.

CORAM : D.B.BHOSALE,J.
DATE : 09/03/2007
PC:

1. Heard the learned counsel for the parties.

2. The petitioners have impugned an order dated 1.12.2006 passed by the trial Court allowing the application filed by the respondents-plaintiffs under Order 22 Rule 4(4) of Code of Civil Procedure, seeking exemption from bringing on record the legal representative of the deceased defendant no.2(a). Mr Dhond, learned counsel for the petitioners, at the outset, invited my attention to the provisions of Order 22 Rule 4(4) of CPC to contend that the application was based on the wrong premise that a written statement was not filed by defendant no.2(a). He submitted that admittedly the deceased-defendant no.2, the husband of defendant no.2(a), had filed the written statement and,

therefore, it cannot be stated that the written statement was not filed by defendant no.2(a). I perused sub-rule (4) of Rule 4 of Order 22. From bare perusal of the said provision, it is clear that if defendants having filed written statement, has failed to appear and contest the suit at the hearing, the Court has power to exempt the plaintiffs from necessity of substituting legal representative of any such defendant. In the present case, admittedly defendant no.2(a) did not appear and contest the suit at the hearing after she was brought on record as the sole heir of her husband defendant no.2. Having regard to this provision, in my opinion, the impugned order does not warrant interference by this court under Article 227 of the Constitution of India. Hence, the writ petition fails and dismissed as such.

(D.B.BHOSALE,J.)